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Debtor and Defendant

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

In re

EVANDER FRANK KANE,

Debtor.

CENTENNIAL BANK,

Plaintiff,

v.

EVANDER FRANK KANE,

Defendant.

Case No. 21-50028-SLJ
Chapter 7

Adv. Proc. No. 21-5016

**ANSWER TO FIRST AMENDED
COMPLAINT¹**

¹ This answer is filed pursuant to the Court's *Order on Stipulation to File an Amended Complaint and Amended Answer* entered on December 6, 2021. ECF 27.

ANSWER TO AMENDED COMPLAINT

1 Evander Frank Kane (“Kane”), the debtor in the above-captioned Chapter 7 bankruptcy
2 case and the defendant in this adversary proceeding, hereby answers the Amended Complaint²
3 filed by plaintiff Centennial Bank (“Centennial”) on December 7, 2021. ECF 28.

4 THE PARTIES

5 1. Kane admits the allegations contained in paragraph 1.

6 2. Kane admits the allegations contained in paragraph 2, except that Kane no longer
7 resides at the address listed on his bankruptcy petition, which property has been sold by the
8 Chapter 7 trustee pursuant to Court order.

9 3. Kane is without sufficient knowledge to form a belief as to the truthfulness of the
10 allegations contained in paragraph 3, and therefore they are deemed denied.

11 JURISDICTION AND VENUE

12 4. Kane admits the allegations contained in paragraph 4.

13 5. Kane admits the allegations contained in paragraph 5.

14 6. Kane admits the allegations contained in paragraph 6.

15 7. Kane admits the allegations contained in paragraph 7.

16 FACTUAL ALLEGATIONS

17 A. Centennial’s Claim Against the Debtor

18 8. Kane admits the allegations contained in paragraph 8.

19 9. Kane admits the authenticity of the documents attached to the Amended
20 Complaint and referenced in paragraph 9 but denies that the Loan was secured or was capable of
21 being secured with respect to his contract with the San Jose Sharks. *See, e.g., Arkison v. Frontier*
22 *Asset Mgmt., LLC (In re Skagit Pac. Corp.)*, 316 B.R. 330 (B.A.P. 9th Cir. 2004); *Local Loan*
23 *Co. v. Hunt*, 292 U.S. 234 (1934).

24 10. Kane admits the allegations in paragraph 10 to the extent they are consistent with
25 the underlying documents. Kane denies Centennial’s characterization that automatic loan

26
27 _____
28 ² Unless otherwise specified, capitalized terms carry the same meaning as defined in the
Amended Complaint to Determine Nondischargeability of Debt Pursuant to: 11 U.S.C.
§523(a)(2)(A); and 11 U.S.C. §§727(a)(2)-(a)(5). ECF 28.

1 payments would ensure that Centennial would be paid “without the need for the Debtor to take
2 any further action.”

3 11. Kane admits the authenticity of the document attached to the Amended Complaint
4 and referenced in paragraph 11 but denies that the Garnishment Waiver confirmed anything, or
5 that it is or was enforceable.

6 12. Kane admits that Centennial advanced the funds referenced in paragraph 12.

7 13. Kane admits the authenticity of the documents attached to the Amended
8 Complaint and referenced in paragraph 13 and admits that Centennial advanced the funds
9 referenced therein, except that (1) based on the documents attached to the Amended Complaint,
10 the loan appears to have been increased from \$5,183,691.17, not \$5,181,691.17, on or about
11 February 28, 2019; and (2) based on the documents attached to the Amended Complaint, the loan
12 appears to have been increased from \$5,539,501.89, not \$5,530,501.89, on or about April 30,
13 2019.

14 14. Kane admits he executed the documents attached to the Amended Complaint and
15 referenced in paragraph 14. Kane denies that Centennial obtained or could obtain a valid security
16 interest in Kane’s contract or his income stream. *See, e.g., Arkison v. Frontier Asset Mgmt., LLC*
17 *(In re Skagit Pac. Corp.)*, 316 B.R. 330 (B.A.P. 9th Cir. 2004); *Local Loan Co. v. Hunt*, 292 U.S.
18 234 (1934).

19 15. Kane denies the allegations contained in paragraph 15. Irrespective of the
20 language cited in the allegations of paragraph 15, Kane denies that the documents provided
21 Centennial with significant and material rights in Kane’s Player’s Contract. Kane does not have
22 sufficient information to respond to the allegation as to whether the purported rights were
23 material to Centennial’s decisions.

24 16. Kane admits the allegations contained in paragraph 16 to the extent that, at some
25 point, he requested that the Sharks issue him “live” paper checks.

26 17. Kane denies the allegations contained in paragraph 17.
27
28

1 B. The Debtor's False Oaths

2 18. Kane admits the allegations contained in paragraph 18 to the extent that he made
3 the referenced amendments to his bankruptcy filings. Kane denies the remainder of the
4 allegations in this paragraph.

5 19. Kane admits the allegations contained in paragraph 19 to the extent they describe
6 the contents of the referenced documents in a manner that is consistent with the contents of those
7 documents. Kane denies the allegations to the extent they seek to describe his intent with respect
8 to any of his actions. Kane denies any "preemptive and premeditated effort to avoid the means
9 [test]." Kane further denies all allegations from "Given the above" to the end of this
10 paragraph (i.e., page 7 lines 5–12).

11 20. Kane denies the allegations in paragraph 20 that he failed to disclose any required
12 information, or that his support payments to his family members were not disclosed.

13 21. As the allegations of paragraph 21 do not identify any real property, but instead
14 refer to "Undisclosed Residential Property," Kane cannot respond to the allegations and as such
15 denies them. To the extent Centennial alleges that Kane communicated false information in order
16 to obtain a loan, Centennial's claims regarding dischargeability have been dismissed and
17 therefore no response is required.

18 22. Kane denies the allegations of paragraph 22. Moreover, as previously determined
19 by the Court, Kane had no obligation to amend Schedule I to report postpetition income.

20 C. The Debtor's Inability to Account for and Explain Dissipation of Assets

21 23. Kane denies the allegations contained in paragraph 23.

22 24. Kane admits that during the 2004 Examination, he could not recall the details of
23 some of the past transactions about which he was questioned.

24 25. Kane admits that during the 341 Meetings and the 2004 Examination, he could
25 not recall the details of some of the past transactions about which he was questioned.

26 26. Kane admits that he could not recall the details regarding some of the personal
27 loans he obtained.
28

27. Kane admits that he could not recall the details regarding some of his prior gambling losses at his 341 Meetings.

28. Kane admits that at the 341 Meetings he could not recall the details of some of the past investments he may have made.

COUNT I

(NONDISCHARGEABILITY OF DEBT PURSUANT TO 11 U.S.C. § 523(a)(2)(A))

29. Kane incorporates his responses to paragraphs 1 through 28. Kane notes that this claim is dismissed per the Court's *Order Granting Motion to Dismiss in Part*. ECF 19.

30. Kane notes that this claim is dismissed per the Court's *Order Granting Motion to Dismiss in Part*. ECF 19. As such, no response is required.

31. Kane notes that this claim is dismissed per the Court's *Order Granting Motion to Dismiss in Part*. ECF 19. As such, no response is required.

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36. Kane notes that this claim is dismissed per the Court's *Order Granting Motion to Dismiss in Part*. ECF 19. As such, no response is required.

COUNT II

(DENIAL OF DISCHARGE PURSUANT TO 11 U.S.C. § 727(a)(2))

37. Kane incorporates his responses to paragraphs 1 through 28.

38. Kane admits the allegations contained in paragraph 38.

ANSWER TO AMENDED COMPLAINT

39. As the allegations of paragraph 39 do not identify any specific real property, but instead refer to “Undisclosed Residential Property,” Kane cannot respond to the allegations and as such denies them.

40. As the allegations of paragraph 40 do not identify any specific real property, but instead refer to “Undisclosed Residential Property,” Kane cannot respond to the allegations and as such denies them.

41. As the allegations of paragraph 41 do not identify any specific real property, but instead refer to “Undisclosed Residential Property,” Kane cannot respond to the allegations and as such denies them.

42. As the allegations of paragraph 42 do not reference any specific real property, Kane cannot respond to the allegations and as such denies them.

43. As the allegations of paragraph 43 do not reference any specific real property, Kane cannot respond to the allegations and as such denies them.

44. As the allegations of paragraph 44 do not reference any specific real property, Kane cannot respond to the allegations and as such denies them.

45. As the allegations of paragraph 45 do not reference any specific real property, Kane cannot respond to the allegations and as such denies them. Furthermore, Kane denies that he transferred or removed, or permitted the transfer or removal, of any property with the intent to hinder, delay, or defraud any of his creditors.

COUNT III

(DENIAL OF DISCHARGE PURSUANT TO 11 U.S.C. § 727(a)(3))

46. Kane incorporates his responses to paragraphs 1 through 28.

47. Kane admits the allegations contained in paragraph 47.

48. Kane admits the allegations of paragraph 48 to the extent that at his 2004 Examination he could not recall the details of some of his past transactions, including all of the names of prior lenders, and denies the remainder of the allegations of this paragraph. Kane notes that the loan documents for the Centennial loans, and for the other related loans, included disbursement instructions that referenced the identity of the High Interest Loan lenders.

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49. Kane admits that during the 341 Meetings and the 2004 Examination, he could not recall the details regarding some transactions about which he was questioned. He denies the remainder of the allegations of paragraph 49.

50. Kane admits that during the 341 Meetings and the 2004 Examination, he could not recall the details regarding some transactions about which he was questioned. He denies the remainder of the allegations of paragraph 50.

51. As the allegations of paragraph 51 do not identify any specific real property, but instead refer to “Undisclosed Residential Property,” Kane cannot respond to the allegations and as such denies them.

52. Kane denies the allegations contained in paragraph 52.

COUNT IV

(DENIAL OF DISCHARGE PURSUANT TO 11 U.S.C. § 727(a)(4)(A))

53. Kane incorporates his responses to paragraphs 1 through 28.

54. Kane denies the allegations contained in paragraph 54.

55. Kane denies the allegations of paragraph 54 except to the extent the allegations are consistent with Kane's testimony that he "could not recall" certain information during his 2004 Examination. Moreover, as the allegations do not identify any specific real property, but instead refer to "Undisclosed Residential Property," Kane cannot respond to the allegations and as such denies them.

56. Kane denies the allegations contained in paragraph 56 to the extent they allege that he intentionally omitted anything, failed to disclose any required information, or that his support payments to his family members were not disclosed.

57. Kane denies the allegations contained in paragraph 57. Moreover, as previously determined by the Court, Kane had no obligation to amend Schedule I to report postpetition income.

58. Kane denies the allegations contained in paragraph 58.

59. Kane denies the allegations contained in paragraph 59.

60. Kane denies the allegations contained in paragraph 60.

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61. Kane denies the allegations contained in paragraph 61.

COUNT V

(DENIAL OF DISCHARGE PURSUANT TO 11 U.S.C. § 727(a)(5))

62. Kane incorporates his responses to paragraphs 1 through 28.

63. Kane admits the allegations contained in paragraph 63.

64. Kane denies the allegations contained in paragraph 64 as misstating the funds he actually received from loans and his salary, as well as being vague and ambiguous as to the allegations regarding additional borrowed funds. Kane also denies Centennial's characterization of his real property as "the only meaningful assets identified in the Schedules."

65. Kane denies the allegations contained in paragraph 65.

66. Kane denies the allegations contained in paragraph 66.

67. Kane denies the allegations contained in paragraph 67.

68. Kane denies the allegations contained in paragraph 68.

CONSENT TO ENTRY OF FINAL ORDER OR JUDGMENT

Pursuant to B.L.R. 7012-1, Kane consents to the entry of a final order or judgment of the Bankruptcy Court in this proceeding.

AFFIRMATIVE DEFENSES

1. The Amended Complaint and each of its claims for relief fail to state a claim upon which relief can be granted.

2. The Amended Complaint and each of its claims are barred by the applicable statutes of limitation.

3. Centennial failed to use reasonable diligence to mitigate damages, if any, allegedly caused by Kane. Such failure bars or reduces any potential recovery from Kane.

4. Any omissions by Kane were not intentional and not material. Nor could any alleged omissions cause harm to the creditors.

5. At all times relevant herein, Kane has acted in good faith and regularly interacted with the trustee and/or creditors to provide requested information.

ANSWER TO AMENDED COMPLAINT

6. Kane presently has insufficient knowledge or information on which to form a belief as to whether he may have additional, as yet unstated, defenses available. Kane reserves the right to assert additional defenses in the event that discovery indicates that they would be appropriate.

PRAYER FOR RELIEF

Wherefore, Kane prays for judgment as follows:

1. That Centennial take nothing by virtue of this action.
2. That judgment be entered in favor of Kane and against Centennial.
3. For costs of suit incurred herein.
4. For such other and further relief as the Court deems proper.

Dated December 9, 2021

FINESTONE HAYES LLP

/s/ *Ryan A. Witthans*

Ryan A. Witthans
Attorneys for Evander Frank Kane